A.F.R.

28-07-2006

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

W.P. (C)NO.3821 OF 2006

PETITIONERS

1. Vijay Kumar Agrawal, Aged 55 years, S/o Tarachand Agrawal
2. Ajay Kumar Agrawal, Aged 50 years, S/o Tarachand Agrawal
3. Sanjay Kumar Agrawal, Aged 45 years, S/o Tarachand Agrawal
4. Abhay Kumar Agrawal, Aged 42 years, S/o Tarachand Agrawal
5. Krishna Kumar Agrawal, Aged 40 years, S/o Tarachand Agrawal

All above are resident of Gaddipara, Ambikapur, District Surguja (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through : Secretary, Revenue Department, D.K.S. Bhawan, Raipur, District Raipur (Chhattisgarh)
2. The Collector, Ambikapur, Surguja, District Surguja (CG)
3. Ku. Nirusha Agrawal, D/o Ramesh Chandra, Agrawal, Aged about 29 years, R/o Vidyanagar, Ambikapur, District Surguja (C.G.)
4. Kailash Kumar Budhiya, S/o Rameshwar Prasad Budhiya, Aged about 52 years, R/o Sadar Road, Ambikapur, District Surguja (CG)
6. Anil Kumar Agrawal, Aged about 45 years, Bajranglal Agrawal, R/o Jawahar Market Ambikapur, Distt. Surguja (CG)
7. Government P.G. College, Ambikapur, Through: its Principal, Ambikapur, District Surguja (CG)

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8. Board of Revenue, Chhattisgarh Bilaspur, Through : its President, Bilaspur, District Bilaspur (CG)

Present: Shri Manoj Paranjpe, learned counsel for the petitioners.
Shri Utkarsh Verma, learned Dy. G.A. for the State.

ORAL ORDER
(Passed on 28th July, 2006)

In this writ petition, the petitioners have assailed the validity of the orders of the Collector, Ambikapur district Surguja, the 2nd respondent herein, dated 17-07-2006 and 01-06-2006, passed in Second Appeal No. 1/A-6/2004-05, in case of Kumari Nirusha Agrawal Vs. Govt. P.G. College, Ambikapur & others. The 2nd respondent on an application made by the respondent No. 3rd herein, under Section 30 of the Chhattisgarh Land Revenue Code 1959 (for short "the Code"), passed the order on 01-06-2006 withdrawing Second Appeal No. 1/A-6/2004-05 from the file of Additional Collector, Ambikapur to his file for hearing and disposal of the same. The petitioners herein who are the main contesting parties in the Second Appeal No. 1/A-6/2004-05 moved an application on 26-06-2006 before the 2nd respondent when they came to know about the order made by the 2nd respondent on 01-06-2006 requesting the 2nd respondent to recall his order dated 01-06-2006 and hear the application filed by the 3rd respondent *de novo* and pass appropriate order. The said application was also rejected by the 2nd respondent on 17-07-2006. It appears that feeling aggrieved by the above orders of the 2nd respondent dated 01-06-2006 and 17-07-2006, the petitioners have preferred revision under Section 50 of the Code to the Board of Revenue on 20-07-2006 and the said revision is pending. When the matter stood thus, the petitioners have moved this writ petition

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under Article 226 of the Constitution of India for quashing the aforementioned two orders passed by the 2nd respondent.

(2) I have heard Shri Manoj Paranjpe, learned counsel for the petitioners and Shri Utkarsh Verma, learned Dy. Govt. Advocate for the respondents/State authorities. It was contended by Shri Paranjpe that the 2nd respondent ought not have withdrawn the Second Appeal No. 1/A-6/2004-05 from the file of Additional Collector, Ambikapur to his file on the basis of the application made by the 3rd respondent, that too, without notice to the petitioners and without giving any opportunity of being heard to the petitioners. It was contended by the learned counsel that though Section 30 of the Code does not mention any circumstance or ground on which the power of transfer or withdrawal of a case is to be exercised by the Revenue Officers mentioned therein, but, it does not mean that that power can be exercised by the officers mentioned therein just for the sake of asking by an interested party. Learned counsel would also submit that the power conferred by the Revenue Officers under Section 30 of the Code is required to be exercised judiciously and not arbitrarily or capriciously. It is also the contention of the learned counsel for the petitioners that though Section 30 of the Code does not specifically provide for compliance of the principles of natural justice, the named officers therein before exercising the power under that Section ought to comply with the principles of natural justice and if it is so, the order passed by the 2nd respondent on 01-06-2006 is liable to be set aside if not for any other reason but on the ground of violation of principles of natural justice. Learned Deputy Govt. Advocate, *per contra*, would contend that the power conferred on the Revenue Officers specified under Section 30 is an administrative power and not

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quasi-judicial as contended by the learned counsel for the petitioners and therefore, there is no legal obligation for the officers named therein to comply with the principles of natural justice before exercising the power under that Section.

(3) Sub-Section (1) of Section 30 of the Code reads as follows:

> **"30. Power to transfer cases to and from subordinates (1)** A Collector, a Sub Divisional Officer, or a Tahsildar may make over any case or class of cases arising under the provisions of this Code or any other enactment for the time being in force, for decision from his own file to any Revenue Officer subordinate to him competent to decide such case or class of cases, or may withdraw any case or class of cases from any such Revenue Officer and may deal with such case or class of cases himself or refer the same for disposal to any other Revenue Officer subordinate to him competent to decide such case or class of cases".

(4) After the judgment of the Supreme Court in **A.K. Kraipak Vs. Union of India**[1] though the distinction between *quasi*-judicial and administrative action has become blurred and may not be of much practical consequence, it is still relevant in determining the measure of natural justice applicable in a given situation. Now, it is well settled that irrespective of the nature of the administrative action, that is to say, whether it is *quasi*-judicial or purely administrative, so long such action has the effect of affecting civil rights of a person, such person should be given opportunity of being heard before such action is taken. In other words, the affected should be appraised is the Constitutional creed flowing from Article 14 of the Constitution of India and the principles of natural justice. In **A.K. Kraipak Vs. Union of India** (Supra[1]), the Supreme Court was of the opinion that in order to determine

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1. (1969) 2 SCC 262 : AIR 1970 SC 150

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whether the action of the administrative authority is *quasi*-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences. In **State of A.P. Vs. S.M.K. Parasurama Gurukul**[2], the Supreme Court replying to the question whether the power of the Government to appoint trustees under Section 15 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 is *quasi*-judicial or administrative, held the function as administrative and opined that if there is lis between the parties, and the opinion is to be formed on objective satisfaction, the action is *quasi*-judicial, otherwise administrative. Similarly, the Supreme Court in **Govindbhai Gordhanbhai Patel Vs. Gulam abbas Mulla Allibhai**[3] opined that since there is nothing in the Act to show that the Collector had to act judicially or in conformity with the recognized judicial norms and as there is also nothing requiring the Collector to determine questions affecting the right of any party, the function of the Collector in giving or withholding permission of transfer of land to a non-agriculturist under Section 63(1) of the Bombay Tenancy and Agricultural Lands Act, 1947 is administrative. In **Krishna Tiles & Potteries (P) Ltd. Vs. Company Law Board**[4] , applying the same parameters, the Delhi High Court held that the function of the Company Law Board granting authority to shareholders to file a petition in the High Court is an administrative and not a *quasi*-judicial function. Furthermore, it needs to be noticed that the Supreme Court in **Ram Avtar Sharma Vs. State of Haryana**[5] held

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2. (1973) 2 SCC 232 : AIR 1973 SC 2237
3. (1977) 3 SCC 179 : AIR 1977 SC 1019
4. ILR (1979) 1 Del 435
5. AIR 1985 915 : (1985)3 SCC 189

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that the function of the Government under Sections 10, 12(5) and 11-A under the Industrial Disputes Act, 1947 to make or refuse a reference to the Labour Court or Industrial Tribunal is administrative in nature. Similarly, in **State of U.P. Vs. Raja Ram Jaiswal**[6], the Supreme Court held that the power to grant or refuse a licence is administrative in character.

(5) In the premise of the above-noted case law, when you look at the provisions of sub-Section (1) of Section 30 of the Code, it is crystal clear that the power conferred on the Collector is administrative in nature. When a Collector exercises the power of transfer or withdrawal of a case, that action does not affect or impair in any way any of the legal rights of the parties to the case. It is true that in some cases transfer or withdrawal of a case may inconvenience a party to such case, but only on that count the power conferred on the Collector could not be regarded as *quasi*-judicial in nature. Since the order that may be made by a Collector for transferring a case from his file or withdrawing a case from another officer's file to his own file does not affect or impair any of the legal rights of the parties to such case, giving of a notice is not necessary before passing such order.

(6) It is true that since the power conferred on the Collector under sub-Section (1) of Section 30 of the Code being a statutory power, the Collector is expected to exercise that power reasonably and fairly and not arbitrarily. In the instant case, it cannot be said that the Collector has exercised the power arbitrarily and without any reason or rhyme as contended by the learned counsel for the petitioners. In

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6. AIR 1985 SC 1108 : (1985) 3 SCC 131.

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this case, appeal was withdrawn from the file of Additional Collector, Ambikapur to the file of the 2nd respondent appreciating the grievance of the 3rd respondent herein that there has been considerable delay in disposing of the appeal by the Additional Collector, Ambikapur and there is urgency to hear and dispose of the appeal at an early date. The 2nd respondent, in the circumstance, thought it fit to withdraw the appeal from the file of the Additional Collector, Ambikapur to his own file for hearing and early disposal. Such an action of the 2nd respondent cannot be condemned as arbitrary or unreasonable.

(7) In the result and for the forgoing reasons, the writ petition is dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Ramde/
Brajesh